

APPEAL NO. 001290

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 11, 2000. The hearing officer determined that the respondent/cross-appellant (claimant) did not sustain a compensable injury on _____, and that the claimant did not have disability. The appellant/cross-respondent (carrier) filed a conditional appeal, stating that if the Appeals Panel reverses the hearing officer's decision, the hearing officer's rulings concerning the exclusion of the testimony of its witnesses should be reversed. The claimant appeals, urging that the hearing officer's decision is against the great weight and preponderance of the evidence and should be reversed. Neither party has filed a response.

DECISION

Affirmed.

The claimant began to work for the employer on November 2, 1999, as a manager-in-training, selling mobile homes. The claimant testified that on _____, when he was moving a dresser out of a mobile home with a coworker, he slipped and fell three and one-half feet to the ground. According to the claimant, he fell on his buttocks and tried to catch himself with his hands, injuring his lower back, left shoulder, and neck. The claimant said he had immediate pain in his lower back, but told his coworker and a supervisor that he was okay. The claimant continued working and testified that because of physical difficulties, he did not move any furniture. On January 10, 2000, the claimant was terminated from employment.

The claimant sought medical treatment on January 14, 2000, with Dr. H. Dr. H's records reflect a history of injury consistent with the claimant's testimony. Dr. H took the claimant off work on January 14, 2000. The claimant testified that he began to look for a job approximately a week after he was terminated from employment and obtained a job on March 6, 2000, selling mobile homes for another employer. The claimant asserted disability from January 14, 2000, until March 6, 2000.

The claimant had the burden to prove that he injured himself as claimed on _____. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.- Texarkana 1961, no writ). The hearing officer was the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). The hearing officer did not find the claimant's testimony or Dr. H's records persuasive. The hearing officer concluded that claimant did not sustain an injury to his lower back, left shoulder, or neck in the course and scope of employment on _____. When reviewing a hearing officer's decision, we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We find there was

sufficient evidence to support the determination of the hearing officer that the claimant did not sustain a compensable injury on _____.

The claimant appealed the hearing officer's finding of no disability. "Disability" is defined as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section 401.011(16). Since we have found the evidence to be sufficient to sustain the determination of the hearing officer that the claimant did not sustain a compensable injury, the claimant cannot have disability under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 92640, decided January 14, 1993.

Since the carrier's appeal was conditioned upon the reversal of the hearing officer's decision and such decision has not been reversed, we dismiss the carrier's conditional appeal.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Philip F. O'Neill
Appeals Judge